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*reasonable* interpretation, subject to definitions supplied in the specification. MPEP

2111. This approach to claim interpretation was recently reiterated by the Court of

Appeals for the Federal Circuit:

> The first step in claim construction is to determine the ordinary and customary meaning,
> if any, that would be attributed to the term by those skilled in the art. Dictionary
> definitions frequently are useful in this process.
> *Boehringer Ingelheim Vetmedica Inc. v. Schering-Plough Corp.*, 65 USPQ2d 1961, 1965
> (Fed. Cir. 2003, citations omitted).

Following the court's recommendation, Applicants note that the term "automatic" has the

usual dictionary definition of "operating with minimal human intervention" (*see* Ex. 1,

excerpt from ultralingua.net).

It appears that the Examiner agrees that the claim limitation that biometric

data extracted from the verification instrument be compared automatically is not

disclosed as part of the principal identification mechanism in Cadorette (*see* Final Office

Action, pp. 10 – 11). Instead, the disagreement between Applicants and the Examiner

appears to stem from the alternative *manual* verification procedure taught by Cadorette.

The Final Office Action takes the position that the automatic comparison recited in the

claims is disclosed in the form of an optical-face-recognition ("OFR") algorithm that an

operator may selectively choose to use as part of the manual verification process. This

single aspect of the comparison does not render the comparison automatic since

significantly more than minimal human interaction remains necessary with the system

taught by Cadorette. The mere use of a tool in a manual process does not render the

process automatic. In fact, the above definition of "automatic" is fully consistent with the

specification, which repeatedly distinguishes procedures that are "automatic" from those

that require human intervention (*see, e.g.,* Application, p. 7. ll. 6   10; p. 7, ll. 32 – 33; p.

10, ll. 23 – 31; p. 12, ll. 12   15)

While Applicants noted in their previous response that the OFR

comparison was merely a tool used as part of a manual comparison, it bears emphasizing

the actual small degree to which this tool is used in the manual comparison, if the

operator chooses to use it at all. The operator is prompted by the system to select the

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photo from the credential image (Cadorette, Col. 15, ll. 43 – 44), then to enlarge the photo to an optimal size rendering (*id.*, Col. 15, ll. 44 – 45, and then to render the photo and the subject's image side by side (*id.*, Col. 15, ll. 46 – 47). While the system may then perform the OFR, it makes no determination whether there is a match between the images, leaving it entirely up to the operator to make such a determination (*id.*, Col. 15, ll. 55). The system may display a notice whether the credential has been verified, but this is done solely in accordance with the declarations of the operator (*id.*, Col. 15, ll. 57 62). Throughout this process, the system responds completely mechanistically in accordance with the instructions of the operator.[1]

It is precisely this type of reliance on operator involvement that the automatic comparison recited in the claims avoids. As the specification explains,

> [t]he problem of accurate, automatic initial enrollment is a significant barrier preventing the use of self-service devices from reaching their full potential. This is particularly so because past approaches have tended to make the enrollment process either perpetual, essentially requiring a new enrollment for every transaction, or *prolonged, as the result of human intervention to verify the identity of the enrollee.* As a result of this problem, it has been difficult for the use of self-service devices to reach their full potential.
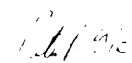> (Application, p. 4, ll. 12 – 17, emphasis added).

While the invention as now claimed avoids these identified deficiencies, use of the manual verification procedure taught by Cadorette still subjects customers to prolonged delays as the operator responds to system queries, selects an image from a credential, resizes the image, repositions the image, instructs the system to run OFR software, examines the results of the software and/or the images themselves, makes a human determination whether they match, and finally instructs the system as to his conclusion.

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[1] The Office Action has also incidentally notes that Cadorette "states that some embodiments may be used in an unattended manner in which the credential presenter acts as the operator" (Office Action, p. 11), citing Col. 6, ll. 26 – 37 of Cadorette. There is nothing in the cited passage to indicate that these embodiments apply to anything other than the principal procedure of Cadorette that relies on images stored by an issuer of the credentials. Indeed, the heavy reliance on intervention by the human operator in the alternative manual verification procedure makes clear that the cited passage is inapplicable to those embodiments.

## CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is urged. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at 303-571-4000.

Respectfully submitted,

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